

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6242 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMC

Versus

NARSINBANU ABDULBHAI SHAIKH

Appearance:

MR HS MUNSHAW for Petitioner

MR IA PATEL for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/12/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner-Ahmedabad Municipal Corporation has challenged the award dated 10.2.1998 passed by the Labour Court, Ahmedabad directing to reinstate the respondent-workman on her original post with continuity of services and with 75% backwages within a period of 30 days.

2. The necessary facts are that the services of the respondent-workman as Staff Nurse was terminated by oral order dated 11.4.1989. She raised industrial dispute which culminated in Reference to the Labour Court being LCA No.1684/89. The respondent workman filed her statement of claim stating, inter-alia, that she obtained a certificate on having passed examination of Nursing as well as Midwife carried out by Gujarat Nursing Council, Ahmedabad. She had worked as Staff Nurse in the Sheth Lallubhai Gordhandas General Hospital, Maninagar, during the period 8.8.1988 to 11.4.1989. She was being paid a monthly salary of Rs.1924/-. Her services were terminated in violation of the provisions of the I.D. Act. The petitioner-employer filed reply to the statement of claim and took the plea that the respondent-workman was engaged against a leave vacancy to which she had not worked for more than 240 days, and therefore, it was not a case of retrenchment. Both the parties produced oral and documentary evidence. The Labour Court found that the respondent workmen had completed 215 days of actual work excluding authorised leave within the period of 9 months. In the opinion of the Labour Court, it was a case of unfair labour practice. In view of this, the Court held the order of termination as illegal and directed for reinstatement with backwages.

2. It is contended by Mr H S Munshaw, learned Advocate appearing for the AMC that the order of the Labour Court is ex-facie illegal, inasmuch as that the respondent workman was engaged as a stop-gap arrangement as daily wager with effect from 10.8.1988 and she was given work depending upon the administrative exigencies of service. She was engaged against leave vacancy. In view of this, it cannot be said to be a case of unfair labour practice. On the other hand, it is contended by the learned Advocate for the respondent that in fact the workmen had worked for more than 240 days. An application was filed before the Labour Court for production of necessary documents to show that she worked for more than 240 days. The said application was contested by the petitioner and as such the documents could not be produced. Mr Munsha, learned Advocate submits that all the relevant documents were produced and on the basis of documents, the respondent-workman was also permitted to cross-examine.

3. I have considered the rival contentions. Ms. Pramilaaben Kadia has admitted that she is Assistant Matron since June 1987 to January 1990. She was supervising the entire nursing staff. She has also

stated that there are permanent Nurses and if any permanent Nurse is on leave, ward-wise stop-gap arrangement is to be made from the available staff. She has also stated that against the leave vacancy, the respondent-workman was engaged purely on temporary basis during the period 8.10.88 to 11.4.1989. According to her respondent-workman worked for 171 days. In a question put to her in the cross-examination, she has categorically stated that the respondent-workman had not worked for 240 days in a calendar year. It is not in dispute that neither the appointment order was issued nor the order of termination was issued. She has also stated that the respondent workman was a student of the hospital and she was entrusted the work of staff nurse as badli nurse on leave vacancy. There is nothing to show that the respondent-workman had worked for 240 days. In view of this, it cannot be said that it is a case of retrenchment. It cannot also be a case of unfair labour practice as the respondent-workman was engaged on temporary basis against the leave vacancy. Thus, in my view, the finding of the Labour Court is ex-facie illegal and unsustainable. In view of the aforesaid, this Special Civil Application is allowed and the award dated 10.2.1998 passed by the Labour Court, Ahmedabad in LCA Reference No.1684/89 is quashed and set aside. Rule made absolute.

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msp.